

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION
AT MEMPHIS**

TOBY MCLURE,

Plaintiff,

vs.

No.

UNUM LIFE INSURANCE COMPANY OF AMERICA,

Defendant.

COMPLAINT

Comes now your plaintiff, Toby Mclure, by and through counsel, and sues the defendant, Unum Life Insurance Company of America (herein Unum) and for cause of action states and shows to this Honorable Court as follows:

1. The plaintiff, Toby Mclure, is a resident of Cordova, Shelby County, Tennessee;
2. That all times herein mentioned, Unum is a foreign corporation with its principle place of business in the state of New Hampshire. The defendant's agent for service of process is the Tennessee Commissioner of Insurance;
3. This Court has jurisdiction pursuant to 28 USC § 1332(a). There is diversity of citizenship between the parties in that the amount of controversy exceeds \$100,000.00. Therefore, subject matter jurisdiction exists in this cause of action;
4. This is a civil action to recover Long Term Disability Benefits pursuant to Section 502(a) of the Employee Retirement Income Security Act of 1974 (**ERISA**);
5. On or about January 1, 1998, the plaintiff became a policy holder of a long term disability policy with Unum. The group number is 546864 and the claim number is 3741798.
6. On or about October 28, 2007, the plaintiff became "**disabled**" and was eligible for disability benefits under said policy. The defendant initially approved Long Term Disability Benefits based upon major depressive disorder in addition to onset of seizures.

7. Disability benefits were paid beginning October 28, 2007 through March 16, 2010. Benefits beyond March 16, 2010 were denied and terminated.

8. On September 10, 2010, the plaintiff appealed this decision.

9. The plaintiff perfected an appeal of this decision defendant also affirmed a denial;

10. The plaintiff has been diagnosed with a significant level of major depression, low back pain, knee pain, shoulder pain and diffused myosocial pain, somatosorm disorder and seizure disorder;

11. The plaintiff's medical condition renders her **"DISABLED"** as defined in **"DEFINITION OF DISABILITY"** under the group policy which is the subject of this litigation;

12. The plaintiff has appealed all denials of her application for disability benefits and all administrative remedies have been exhausted.

13. Defendant has failed to pay benefits of said policy and plan which benefits amounting to 66 2/3rds of the plaintiff's gross monthly income for each month she is unable to engage in material and substantial employment duties;

14. There will be additional benefits due after the filing of this lawsuit as the plaintiff remains disabled;

15. The defendant's denial of disability benefits (arbitrary and capricious as defined by Six Circuit case law governing ERISA plan.

WHEREFORE, the plaintiff prays for a judgment against the defendant for all accrued benefits, for any month she is disabled under the policy, for pre-judgment and post-judgment interest, for attorney fees, for future benefits and for relief the Court deems proper under the circumstances.

Respectfully submitted,

The Law Offices of John E. Dunlap, P.C.

/s/ John E. Dunlap

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